

claims in this application and even found claim 7 at one point in the prosecution of this application, to be allowable, as evidenced in the Office Action mailed Sep-27, 2004. Therefore, Applicants respectfully traverse this restriction.

Additionally, there have been no references cited to show any necessity for requiring restriction and, in fact, it is believed that the Examiner would find references containing the method claims in the same field of technology.

Furthermore, it is noted that the Examiner has not identified different classifications and sub-classifications in the art for the claims drawn to the method of determining a jitter value. Therefore, it is believed that the evaluation of all claims would not provide an undue burden upon the Examiner at this time in comparison with the additional expense and delay to Applicants in having to protect the additional subject matter by filing a divisional application. Even assuming that the claims would be in different classifications, it is believed that classification is not conclusive on the question of restriction.

MPEP § 803 sets forth the criteria for restriction between patentably distinct inventions. (A) indicates that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05-806.05(i)); and (B) indicates that there must be a serious burden on the Examiner if restriction is required (see MPEP §803.02, §806.04(a)- §806.04(i), §808.01(a) and §808.02). The Examiner has not set forth why there would be a serious burden if restriction is required.

Further, the making of an election species is not mandatory in all instances where it is possible to do so. Rather, the Examiner may use his/her discretion and choose not to make an election of species where circumstances warrant. It is believed that such is the case in the subject application. Therefore, Applicants request, under 37 CFR § 1.143, that the Examiner reconsider and withdraw the election requirement set forth in the above-noted Office Action.

III. Conclusion

In view of the foregoing amendments, arguments and remarks, all claims are deemed to be allowable and this application is believed to be in condition for allowance.


If any further fees are required in connection with the filing of this Amendment, please charge the same to our deposit account number 50333.

Should any questions remain unresolved, the Examiner is requested to telephone Applicants' attorney.

Respectfully submitted,

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